

BEFORE LINDA McCULLOCH, SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

* * * * *

SUSANNE CASEY)	
Petitioner,)	
)	OSPI 280-99
vs.)	
)	DECISION AND ORDER
)	
MUSSELSHELL COUNTY SCHOOL)	
DISTRICT No. 9)	
Respondent.)	

* * * * *

Having reviewed the record in this matter and considered the parties' briefs, the State Superintendent issues the following Decision and Order.

DECISION AND ORDER

The May 28, 1999, Findings of Fact, Conclusions of Law, and Order of the Acting Musselshell County Superintendent is **AFFIRMED**.

PROCEDURAL HISTORY

This is an appeal by Susanne Casey of a May 28, 1999, Order by the Acting Musselshell County Superintendent of Schools ("the County Superintendent"). The County Superintendent denied Ms. Casey's claim that the Board of Trustees of the Musselshell County School District No.9 ("the District") failed to give her a contract for school year 1996-1997 by May 1, 1996.

This dispute has a long and complicated procedural history. Ms. Casey filed an appeal with the County Superintendent on August 2, 1996, captioned "Appeal in Contested Case Arising From Termination of a Tenured Teacher-§20-4-204, MCA." This caption misstates the nature of the issue on appeal. The District did not, in fact, terminate Ms. Casey; it offered her a teaching contract that she did not accept within the twenty days (plus an extension of time) allowed her by the District.

On August 7, 1996, Ms. Casey also filed a petition in the Montana Fourteenth Judicial District, Musselshell County, captioned a “Petition to Void the Board of Trustees Action pursuant to § 2-3-213 MCA.” The District Court, Judge David Cybulski presiding, heard the matter in a non-jury trial on October 29, 1998, and issued Findings of Fact, Conclusion of Law and the following Order dated November 19, 1998:

“Casey seeks an Order from this Court voiding a decision of the School District and its Board of Trustees. The School District and its Board of Trustees at its monthly School Board meeting of June 4, 1996 voted unanimously not to extend the time in which Casey had to sign her annual teacher’s contract for the academic school year of 1996-1997. Since the Petition to Void the Board of Trustees action was filed by Casey on August 7, 1996, more than thirty days following the June 4, 1996 School Board meeting, this Court lacks jurisdiction in which to review the decision of the School District and its Board of Trustees pursuant to § 2-3-213, MCA. Additionally, Casey has failed to submit any evidence in support of her contention that Montana’s Open Meeting Law, § 2-3-203 (1), MCA has been violated by the School District or its Board of Trustees in respect to any of its meetings including those of June 4, 1996, July 15, 1996 or July 17, 1996. There is no evidence to suggest that any discussions were conducted by the School District or its Board of Trustees in a closed session concerning Casey’s employment and in any event, neither the July 15 or 17, 1996 meetings in any way altered the decision of the School District and its Board of Trustees as announced at their June 4, 1996 meeting. ***Finally, Casey failed to comply with Montana law in respect to providing the School District and its Board of Trustees with written acceptance of the conditions of her employment as required by §20-4-205, MCA and pursuant to that same statute, her failure to do so is conclusive evidence of her nonacceptance of the tendered position. In other words, Casey failed to accept a teaching job with the School District which had been offered to her. For these reasons and the reasons previously set forth,***

IT IS HEREBY ORDERED that the Petition to Void the Board of Trustees action filed by Petitioner on August 7, 1996 is dismissed with each party bearing its own costs and attorneys’ fees incurred in respect to the handling of this matter.

Susanne Casey v Musselshell County School District No. 9, Fourteenth Judicial District, Musselshell County, Cause No. DV 96-63, pages 9 and 10 (Emphasis added).

The County Superintendent and this Superintendent are bound by the Fourteenth Judicial District’s Findings, Conclusion and Order.

On November 25, 1998, the District submitted a “Notice of Judicial Decision” to the County

Superintendent stating that the District Court Order resolved all issues pending before the County Superintendent. Ms. Casey submitted an “Affidavit of Susanne Casey” dated December 10, 1998, which, among other things, included the following statements:

“2. Your affiant contends that substantial issues remain to be resolved in the pending action before the Superintendent of Schools;

“3. Your affiant contends that the motion [Notice of Judicial Decision] filed by the Respondent is incorrect where it contends that all issues pending before the hearings officer have been resolved;

“4. Your affiant contends that the School Board for Musselshell District failed to comply with Montana Law, specifically Section 20-3-205 (1) M.C.A [1995].”

The County Superintendent’s record provides no further explanation of how this matter proceeded to hearing on March 22, 1999, but the District renewed its motion to dismiss.

Following the March hearing, the County Superintendent issued Findings of Fact, Conclusions of Law and an Order dated May 28, 1999, denying and dismissing the appeal. That Order is the subject of this appeal and the question before the State Superintendent in this appeal is: Did the District satisfy the requirements of § 20-4-205, MCA, (1995)?¹.

STANDARD OF REVIEW

The State Superintendent’s review of the County Superintendent’s decision is based on the standard of review of administrative decisions established by the Montana Legislature in

¹Section 20-4-205 (1) (1995) was amended in 1997. See 1997 Mont. Law Ch. 438, Sec. 4. The text of that statute at the time of the 1996 appeal was:

(1) The trustees shall provide written notice by May 1 to all tenure teachers who have been reelected. Any tenure teacher who does not receive notice of reelection or termination shall be automatically reelected for the ensuing school fiscal year.

(2) Any tenure teacher who receives notification of his reelection for the ensuing school fiscal year shall provide the trustees with his written acceptance of the conditions of such reelection within 20 days after the receipt of the notice of reelection, and failure to so notify the trustees within 20 days

Mont. Code Ann. § 2-4-704 and adopted by the Superintendent in Admin. R. Mont. 10.6.125. Findings of fact are reviewed under a clearly erroneous standard and conclusions of law are reviewed to determine if the correct standard of law was applied. See, for example, Harris v. Trustees, Cascade County School Districts No. 6 and F, 241 Mont. 274, 277, 786 P.2d 1164, 1166 (1990) and Steer, Inc. v. Dept. of Revenue, 245 Mont. 470, at 474, 803 P.2d 601, 603 (1990).

Granting a motion to dismiss based on lack of jurisdiction is a conclusion of law. On review, the Superintendent uses the standard that motions to dismiss are viewed with disfavor and are considered from the perspective most favorable to the opposing party. Buttrell v. McBride Land and Livestock, 170 Mont. 296, 553 P.2d 407 (1976). Bland v. Libby School District No. 4, OSPI 205-92, 12 Ed. Law 76 (1993).

MEMORANDUM OPINION

A time line of the events leading up to the appeal to the County Superintendent helps to clarify the issue on appeal:

April 9, 1996: The District's Board of Trustees ("the Board") held its monthly meeting that included a discussion of the annual teachers' contracts for school year 1996-1997. The District employed two teachers at that time. The last contract between the Petitioner and the Board was dated April 6, 1995 and terminated pursuant to its terms on May 25, 1996. The District employees requested a 5% raise, which the Board approved at this meeting.

April 30, 1996: Mary Cooley, the District Clerk, typed the contracts the Board was offering employees, dated them, and placed one in Ms. Casey's school mail box.

Sometime between April 30, 1996 and May 3, 1996: Ms. Casey removed the contract from her mailbox.

May 7, 1996: The Board held its monthly meeting. Ms. Casey was present at the meeting and told the Board she had concerns about her 1996-1997 contract because she was not sure her base pay had been correctly calculated in 1985. After some

shall constitute conclusive evidence of his nonacceptance of the tendered position.

discussion of this matter at the meeting, Ms. Casey asked the Board if she could have an extension of time to investigate this claim. On May 20, 1996, Ms. Casey's time to accept the contract was scheduled to expire. Consistent with state law, the contract dated April 30, 1996, contained this provision: "It is further understood that this contract must be accepted and signed within twenty days from the day and date first above written to be valid." The Board granted Ms. Casey additional time until June 4, 1996, to consider whether she would sign her contract.

June 4, 1996: The Board held its monthly meeting. Ms. Casey and her husband attended. Ms. Casey told the Board that she would not sign her contract. The Board voted unanimously not to grant any further extension of time for Ms. Casey to sign her contract.

July 15, 1996: A special meeting of the Board was held at the request of Ms. Casey and her attorney. This meeting was adjourned and reconvened on July 17, 1996. This meeting was the subject of the open meeting law violation claim raised in District Court.

August 2, 1996: Ms. Casey filed the appeal with the County Superintendent.

August 7, 1996: Ms. Casey filed the petition in District Court.

November 19, 1998: In the District Court action, District Judge Cybulski concluded that Ms. Ms. Casey "failed to comply with Montana law in respect to providing the School District and its Board of Trustees with written acceptance of the conditions of her employment as required by §20-4-205, Mont. Code Ann. and pursuant to that same statute, her failure to do so is conclusive evidence of her nonacceptance of the tendered position. In other words, ***Ms. Casey failed to accept a teaching job with the School District which had been offered to her.***" Susanne Casey v Musselshell County School District No. 9, Fourteenth Judicial District, Musselshell County, Cause No. DV 96-63, page 9 (Emphasis added).

May 28, 1999: The County Superintendent ordered that Ms. Casey's August 2, 1996, appeal be denied and dismissed.

Issue on Appeal. In her June 9, 1999, appeal to the State Superintendent, Ms. Casey stated the issue on appeal as follows: "The Appellant contends that she did not receive notice of reelection or termination by May 1, 1996. Therefore pursuant to Section 20-4-205, M.C.A., she was automatically reelected for the ensuing and subsequent school years."

A. Statute of Limitations. Assuming, for purposes of a motion to dismiss, that this was the issue originally raised in the County Superintendent appeal on August 2, 1996, the appeal was not

timely. Montana law provides that in “order to establish a uniform method of hearing and determining matters of controversy arising under this title, the superintendent of public instruction shall prescribe and enforce rules of practice and regulations for the conduct of hearings and the determination of appeals by all school officials of the state.” Mont. Code Ann. §20-3-107 (3). Those administrative rules provide, in turn, that a “school controversy contested case shall be commenced by filing a notice of appeal with the county superintendent and the parties *within 30 days after the final decision of the governing authority of the school district* is made.” Admin. R. Mont. 10.6.103(2) (Emphasis added).

That administrative rule establishes a 30-day statute of limitations on administrative appeals of school board decisions. If, as Petitioner now contends, the issue she appealed on August 2, 1996, was that the District failed to act by May 1, 1996, then that issue had to be raised by June 1, 1996 (i.e., within 30 days of May 1, 1996). Ms. Casey’s August 2, 1996, appeal to the County Superintendent was filed 93 days after May 1, 1996, and was therefore outside of the statute of limitations.

Statutes of limitation create jurisdictional limits; if the time to appeal has expired, then the reviewing tribunal lacks jurisdiction to act. See, for example, MCI Telecommunications Corp. v. Montana Department of Public Service Regulation, 260 Mont. 175, 858 P.2d 364 (1993). After the time allowed to appeal a school board's action (or its failure to act) has passed, neither the County Superintendent nor the State Superintendent holds jurisdiction over the matter. Fuhrman v. Board of Trustees, Garfield County School District No.1, OSPI 224-93, 13 Ed. Law 110 (1994); Tuma v. Board of Trustees, Sanders County School District No. 6, OSPI 228-93, 13 Ed. Law 108 (1994); Scharler v. Whitehall School District Board of Trustees, OSPI 239-94, 14 Ed. Law 29 (1995), Whitefish Softball Association v. Board of Trustees, OSPI 281-99, 18 Ed. Law 264 (1999).

The District raised the issue of jurisdiction and moved to dismiss the appeal on August 19, 1996, but the proceeding in District Court took precedent and it is unclear from the record whether the County Superintendent ruled on that motion. The County Superintendent could have proceeded to hearing, then granted the District's motion to dismiss. This may be what the County Superintendent was stating at page 11 of the May 28, 1999, Order:

“Additionally, the ‘Appeal’ filed in this matter by Casey did not raise the issue that she now seeks to litigate in this matter, i.e., whether or not she received her teacher’s contract on or before May 1, 1996, and therefore as a matter of law, Casey is barred from prosecuting this claim due to the running of the applicable statute of limitations which was thirty days. (See ARM 10.6.103).”

In any event, the County Superintendent correctly concluded that by August 2, 1996, the County Superintendent lacked jurisdiction to review whether the District had provided Ms. Casey with written notice of renewal by May 1, 1996.

B. Substantial Credible Evidence. To avoid, perhaps, further litigation of the dispute, the State Superintendent will briefly review the merits of Ms. Casey’s claim.

There is substantial, credible evidence in the record that supports the County Superintendent’s finding that the District provided written notice of re-election prior to May 1, 1996. Mary Cooley was the District Clerk for 35 years. At the County Superintendent hearing, Ms. Cooley testified that for at least 20 years prior to 1996, the District delivered contracts to its teachers by placing the contract in the teacher’s school mailbox. (Transcript of March 22, 1999, County Superintendent Hearing, pages 93 and 94.) Ms. Cooley testified that she typed Ms. Casey’s contract on April 30, 1996, dated it, and placed it in Ms. Casey’s mailbox. She also testified that she told Ms. Casey the contract was in her mailbox. The County Superintendent found Ms. Cooley’s testimony credible.

At the District Court hearing Ms. Casey herself testified that sometime between April 30,

1996, and May 3, 1996, she found and removed from her mailbox the contract offered to her. She acknowledged that Ms. Cooley informed her that Ms. Cooley had placed the contract in her school mailbox. (Transcript of District Court Trial, page 157.)

Moreover, Ms. Casey's actions in May 1996 establish that in May 1996 she believed she was offered a contract. She went to the May 7, 1996, Board meeting, asked for, and was granted an extension of the statutory time allowed for accepting the Board's offer of re-election. In her August 2, 1996, appeal, Ms. Casey stated "Pursuant to § 20-4-205 (1) the Board of Trustees is required to give notice of reelection by May 1 of each school year. In accordance with said section, the Clerk for the Board of Trustees, Mary Cooley, caused to be hand delivered a proposed contract for the ensuing 1996-1997 school year." (Appeal in Contested Case, page 2.)

CONCLUSION

The Acting Musselshell County Superintendent's Order is **AFFIRMED**.

Dated this 7th day of December 2001.

/s/ LINDA McCULLOCH
Superintendent of Public Instruction

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 7th day of December 2001, a true and exact copy of the foregoing DECISION AND ORDER was mailed, postage prepaid, to the following:

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